

TITLE 22 AGRICULTURE AND HORTICULTURE

CHAPTER 34 PESTICIDES AND CHEMIGATION

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22-3401. DEFINITIONS. When used in this act:

(1) "Adulterated" means a pesticide is adulterated for the purpose of this act if the strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(2) "Antipollution device" means any mechanical equipment used to reduce hazard to the environment in cases of malfunction or shutdown of chemigation equipment during chemigation and may include, but not be limited to, interlock, irrigation line check valve, chemical line closure device, vacuum relief device and automatic low-pressure drain.

(3) "Certified applicator" means a person who has qualified as a professional applicator, or private applicator under the provisions of this act and the rules promulgated by the director.

(4) "Chemical" means any fertilizer or pesticide.

(5) "Chemigation" means any process whereby chemicals are added to irrigation water applied to land, crops or plants through an irrigation system, such as, but not limited to, agricultural, nursery, turf, lawn, golf course and greenhouse sites.

(6) "Defoliant" means any substance or mixture of substances intended for causing the foliage to drop from a plant, with or without causing abscission.

(7) "Department" means the Idaho department of agriculture.

(8) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

(9) "Designated agent" means an employee or agent of the state authorized by the director to perform various duties in connection with enforcement of this act.

(10) "Device" means an instrument or contrivance, other than a firearm, intended to trap, destroy, control, repel or mitigate any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals, but does not include equipment used for the application of pesticides when sold separately therefrom.

(11) "Director" means the director of the department of agriculture of the state of Idaho.

(12) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, deliver or offer to deliver, pesticides in this state.

(13) "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(14) "EPA" means the United States Environmental Protection Agency.

(15) "Fertilizer" means any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one (1) or more plant nutrients.

(16) "General use pesticide" means any pesticide which is not a restricted-use pesticide.

(17) "Irrigation system" means any device or combination of devices having a hose, pipe, or other conduit which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied to land, crops or plants. The term does not include any hand-held sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow into the water source.

(18) "Label or labeling" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers. It would also include all other written, printed or graphic material that accompanies the pesticide or device at any time.

(19) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(20) "Misbranded" shall apply to (a) any pesticide or device if its labeling bears any false or misleading statement, design or graphic representation, and (b) any pesticide if such pesticide is not labeled as required by section 22-3402, Idaho Code, and (c) any pesticide if the labeling bears any reference to the registration provisions of section 22-3402, Idaho Code, unless such reference is required by rules promulgated by the director.

(21) "Person" means any individual, partnership, association, fiduciary corporation, or any organized group of persons whether incorporated or not.

(22) "Pest" means (a) any insect, rodent, nematode, fungus, weed, or (b) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, except virus, bacteria, or other microorganism on or in living man or other living animals, which the director declares to be a pest.

(23) "Pesticide" means but is not limited to (a) any substance or mixture of substances intended to prevent, destroy, control, repel or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus or fungus on or in living man or other animal, which is normally considered to be a pest or which the director may declare to be a pest, and (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant, and (c) any spray adjuvant.

(24) "Pesticide dealer" means a person who distributes any restricted-use pesticide or general use pesticide except those exempted in section 22-3406, Idaho Code, or any pesticide whose uses or distribution are further restricted by the director by rule.

(25) "Pesticide equipment" means any equipment, machinery, or apparatus used in the actual application of pesticides including aircraft and ground-spraying equipment.

(26) "Pesticide industry representative" means a person who is a pesticide manufacturer's representative, distributor's representative, or any field representative of any company or organization that deals in agricultural commodities, who uses or supervises the application of restricted-use pesticides solely for the purpose of demonstrating the use of the restricted-use pesticide.

(27) "Plant regulator" means any substance or mixture of substances intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(28) "Private applicator" means a person who: (a) uses or supervises the use of restricted-use pesticides to produce agricultural commodities or forest crops on land owned or rented by him or his employer; or (b) applies restricted-use pesticides on the property of another without compensation other than the trading of personal services between producers of agricultural commodities; or (c) applies chemicals through irrigation systems on land owned or rented by him or his employer.

(29) "Professional applicator" means a person who: (a) applies pesticides upon the land or property of another for compensation, or applies chemicals through irrigation systems upon the land or property of another for compensation; or (b) uses or supervises the use of restricted-use pesticides and is not a private applicator; or (c) offers or supplies technical advice or recommendations regarding the use of agricultural pesticides.

(30) "Restricted area" means an area established under the provisions of section 22-3419, Idaho Code, to prohibit or restrict the application of pesticides in order to prevent injury to land, people, animals, crops or the environment.

(31) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the administrator of EPA.

(32) "Spray adjuvant" means any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a separate container from that of the pesticide with which it is to be used.

(33) "State restricted pesticide use" means any pesticide use which, when used as directed in accordance with a widespread and commonly recognized practice, may be further restricted when the director determines, subsequent to a hearing, that additional restrictions are needed for that use to prevent unreasonable adverse effects on the environment including man, lands, beneficial insects, animals, crops and wildlife, other than pests.

(34) "Under the direct supervision of a certified private applicator" means that, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified private applicator if it is applied by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though the certified private applicator is not physically present at the time and place the pesticide is applied.

(35) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(36) "Wildlife" means all living things that are neither human, domesticated, nor as defined in this act, pests, including but not limited to, mammals, birds and aquatic life.

22-3402. REGISTRATION -- LABELS -- INFORMATION REQUIRED -- FEES.

(1) Any pesticide which is distributed within this state shall be registered with the department, and such registration shall be renewed annually.

(2) The registrant shall file with the department a statement including:

- (a) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant; and
- (b) the name of the pesticide; and
- (c) a complete copy of the labeling except for annual renewals where the registrant has certified that the product label on file with the department is unchanged; and
- (d) if requested by the director the registrant shall furnish efficacy data upon which all the label claims are based for those products registered for special local needs as provided for in Section 24(c) of the Federal Insecticide, Fungicide, Rodenticide Act; and
- (e) such other information as the director may require.

(3) Contents of the label:

- (a) All pesticide labels shall contain statements, words, graphic material and any other information required by federal laws; and
- (b) all labels for spray adjuvants shall contain but are not limited to:
 - 1. The name of the pesticide; and
 - 2. The name and address of the manufacturer. An unqualified name and address listed on the label shall be considered the manufacturer's name and address; and
 - 3. The registrant's name and address. If the registrant's name appears on the label and the registrant is not the manufacturer, it must be qualified by appropriate wording such as "packaged for or distributed by"; and
 - 4. The net contents; and
 - 5. The name and type of functioning agents. If more than three (3) agents are present, only the three (3) principal agents need be named; and
 - 6. The total percentage of constituents ineffective as a spray adjuvant; and
 - 7. Directions for use.

(4) Pesticides which have identical ingredient statements, identical label claims, are manufactured by the same company, and the labels of which bear a designation identifying the products as the same pesticide may be registered as a single pesticide

provided the additional product names and labels are supplied and specified as one (1) pesticide.

(5) The director may register a pesticide if he determines that, when considered in connection with any restrictions imposed under section 22-3419, Idaho Code:

- (a) Its composition is such as to warrant the proposed claims for it; and
- (b) Its labeling and other material required to be submitted comply with requirements of federal law and Idaho law; and
- (c) It will not cause an unreasonable adverse effect on the environment; and
- (d) In the case of an application for registration for a special local need:
 - 1. A special local need exists, and
 - 2. Authority to issue the registration in question has been obtained from the administrator of EPA, pursuant to Section 24(c), Federal Insecticide, Fungicide, Rodenticide Act.

(6) The registrant shall pay an annual registration fee as prescribed by rule.

(7) If the application for renewal is not filed with the department prior to January 1 of each year a late penalty fee of five dollars (\$5.00) per product shall be assessed and added to the original fee and shall be paid prior to the issuing of the renewal registration. No penalty fee shall be assessed if the applicant furnishes an affidavit stating that he did not distribute such unregistered pesticide subsequent to the expiration of registration of that pesticide.

(8) The director, whenever he deems it necessary in the administration of this act, may require the submission of the complete formula of any pesticide.

(9) A registration shall expire on December 31 following issuance unless the registration has been suspended or revoked as provided for in paragraph (10) of this section.

(10) Refusal to register, suspension:

- (a) If it does not appear to the director that the composition of the pesticide is such as to warrant the proposed claims for it, or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this act or rules adopted thereunder, he shall notify the applicant of the manner in which the pesticide, labeling or other material required to be submitted fails to comply with the provisions of this act so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the director may refuse to register the pesticide. The applicant may request a hearing as provided for in the provisions of chapter 52, title 67, Idaho Code.
- (b) When the director determines that a pesticide or its labeling does not comply with the provisions of this act or the rules adopted thereunder, or when

necessary to prevent unreasonable adverse effects on the environment, he may suspend, revoke, or modify the registration of such pesticide in accordance with the provisions of chapter 52, title 67, Idaho Code.

(11) Exemptions:

(a) The following pesticides are exempt from subsection (1) of this section:

1. A pesticide that is shipped intrastate from one plant to another operated by the same person solely for the purpose of repackaging or for use as a constituent part of another pesticide produced at the second plant; and
2. A pesticide labeled for experimental use only under the provisions of Section 5 of the Federal Insecticide, Fungicide, Rodenticide Act or section 22-3403, Idaho Code; and
3. A pesticide that is transported through the state to a destination outside of the state; and
4. A pesticide that is manufactured within the state solely for the purpose of exportation.

(b) Federal, state of Idaho, and other governmental agencies are exempt from subsections (6) and (7) of this section.

22-3403. EXPERIMENTAL PERMITS. Provided that the state is authorized by the Administrator of EPA to issue experimental permits and subject to the terms and conditions of such authorization, the director may:

(1) Issue an experimental permit to any person applying for an experimental permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide for a special local need under section 22-3402(5), Idaho Code, and that the pesticide use under the proposed terms and conditions would not cause unreasonable adverse effects on the environment.

(2) Prescribe terms, conditions, and period of time for the experimental permit.

(3) Revoke or modify any experimental permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

22-3404. PESTICIDE AND CHEMIGATION APPLICATORS -- CLASSIFICATION LICENSING REQUIREMENTS. (1) The director may classify pesticide applicator licenses issued under this act. Such classifications may include, but are not limited to, professional and private applicators. Separate licensing requirements and testing procedures may be utilized for each classification.

(2) Professional Applicators -- no person shall act as a professional applicator without first obtaining a professional applicator's license issued by the department.

(a) Application for a license shall be on a form prescribed by the department and shall be accompanied by a fee as prescribed by rule; and

(b) On the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and

(c) An applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake, or proper equipment and methods for injecting chemicals through irrigation systems; and

(d) Show proof of financial responsibility as prescribed by rule; and

(e) An examination fee will be charged as prescribed by rule and an additional examination fee of five dollars (\$5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

(f) If at any time a licensed professional applicator fails to maintain the financial responsibility required by paragraph (d) of this subsection, his license shall be automatically suspended until the department receives verification that he is in compliance with paragraph (d) of this subsection.

(3) Private Applicator -- no person shall act as a private applicator without first obtaining a private applicator license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) On the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and

(c) An applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake or proper equipment and methods for injecting chemicals through irrigation systems; and

(d) An applicant must pay a license fee as prescribed by rule.

(4) If the director finds an applicant qualified for a professional or private applicator's license; and if an applicant applying for a license to engage in the application of

pesticides or chemicals has met all of the requirements of any applicable federal or state laws, regulations and rules, the director shall issue the license. The license or permit may restrict the applicant to the use of a certain type or types of equipment, pesticides or chemicals. If a license or permit is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

(5) The director may by rule require professional applicators to maintain and furnish records forthwith pertaining to the application of pesticides and other relevant information as he may deem necessary.

(6) Licenses issued to dealers, professional and private applicators shall expire as designated by the director unless suspended or revoked as provided for in section 22-3409, Idaho Code.

(7) Exemptions:

(a) The following persons are exempt from subsections (2), (3) and (4) of this section unless the person is applying chemicals through an irrigation system:

1. Any person applying pesticides other than restricted-use pesticides for himself or on an exchange of service basis, and who does not publicly hold himself out as a professional applicator; and
2. Any person using hand-powered equipment to apply pesticides other than restricted-use pesticides to lawns, or to ornamental trees and shrubs owned by such person, or as an incidental part of his business of taking care of yards for remuneration, and is not holding himself out as a professional applicator; and
3. Any industry, governmental, University of Idaho research personnel and extension research personnel who apply pesticides other than restricted-use pesticides to experimental plots or to demonstrate the use of pesticides; and
4. Any veterinarian who applies pesticides as an integral part of his business and does not publicly hold himself out as a professional applicator.

(b) Federal, state, and other governmental agencies are exempt from the licensing fees provision of subsections (2) and (3) of this section.

(c) Professional applicators who do not apply pesticides may receive a exemption from the proof of financial responsibility required in subsection (2)(d) of this section, upon submitting a completed form prescribed by the department.

22-3406. PESTICIDE DEALERS. No person shall act as a pesticide dealer without first obtaining a pesticide dealer's license issued by the department.

(1) Licensing:

- (a) Application for a pesticide dealer's license shall be on a form prescribed by the department and shall be accompanied by a fee as prescribed by rule; and
- (b) An applicant who sells restricted-use pesticides must pass the department's examination and obtain a professional applicator's license in order to demonstrate his knowledge of how to use and handle pesticides in areas relevant to the operation he intends to undertake; and
- (c) Such application shall be due as prescribed by rule; and
- (d) A license shall be required for each location, outlet, or warehouse from which such pesticides are distributed; and
- (e) for an applicant selling restricted-use pesticides an examination fee will be charged as prescribed by rule and an additional examination fee of five dollars (\$5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date.

(2) Records and Reports:

(a) Restricted-use pesticides or devices: The director shall require a pesticide dealer to keep accurate sale and distribution records of restricted-use pesticides or devices as prescribed by rule;

- (i) The director may also require a pesticide dealer to maintain other records and furnish reports for restricted-use pesticides or devices he determines necessary to implement the provisions of this act; and

- (ii) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and

- (iii) The dealer shall be required to post total sales of each restricted-use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by rule.

(b) General use pesticides: The director shall require a pesticide dealer to keep accurate sale and distribution records as prescribed by rule of general use pesticides except those exempted in subsection (4) of this section.

- (i) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and

- (ii) The dealer shall be required to report total sales of each general use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by rule; and

- (iii) The director may require dealers to furnish other reports of these records in the case of emergency as provided by rule.

(3) Pesticide dealers shall sell restricted-use pesticides (RUP) only to licensed professional and private applicators, and dealers; however, pesticide dealers may sell an RUP to an unlicensed person provided the application of the RUP is made by a licensed professional applicator or licensed private applicator.

(4) Exemptions:

(a) A manufacturer's representative or wholesale distributor shall be exempt from subsection (1) of this section provided such representative or distributor does not have a warehouse in Idaho that pesticides are sold, stored or distributed from; and

(b) Federal, state and other governmental agencies are exempt from the examination and licensing fees of this section; and

(c) The director may exempt a pesticide from the provisions of subsection

(1) Or (2) of this section by rule if it is determined that licensing or recordkeeping is not necessary for selling the pesticide.

(5) A user of a pesticide, without obtaining a pesticide dealer's license, may for the exclusive purpose of keeping it from becoming a waste, distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide.

22-3406A. RESPONSIBILITIES OF CHEMICAL SUPPLIERS. Any person who supplies or sells at retail a chemical and who knows or has reason to know that the chemical will be applied by chemigation shall sell chemicals only to licensed professional or private applicators with a chemigation category.

22-3406B. CHEMIGATOR RESPONSIBILITIES. The chemigator shall be responsible for assuring that the irrigation system and chemigation equipment functions properly.

22-3407. REQUALIFICATION. The director may renew any applicant's license or permit issued under the provisions of this act provided the applicant has met the requirements imposed by the director to ensure that the applicant continues to meet the requirements of changing technology and to assure the proper and safe use of pesticides or chemicals.

22-3407A. USE OF IRRIGATION SYSTEM FOR CHEMIGATION -- COMPLIANCE WITH STANDARDS AND REQUIREMENTS. Any person who utilizes an irrigation system for chemigation shall comply with any standards and requirements which are established pursuant to section 22-3421, Idaho Code, and shall be certified and licensed as provided in this chapter.

22-3407B. DEPARTMENT TO COMPILE LIST. The department shall compile a list of the types of chemigation systems or portions thereof which may be used by persons to apply chemicals through an irrigation system in accordance with the rules promulgated under section 22-3421, Idaho Code. This list shall be made public and constitutes state recognition of a chemigation system.

22-3408. STOP SALE, USE OR REMOVAL ORDER AND CHEMIGATION STOP WORK ORDER.

(1) The department may issue and enforce a written stop sale, use or removal order to the owner or custodian of any pesticide or device to hold such pesticide or device at a designated place when the department finds such pesticide or device being distributed in violation of any of the provisions of this act or rules, or is likely to cause unreasonable adverse effects on the environment. The director shall release the pesticide or device by written order when the owner or custodian has complied with all of the provisions of this act and rules.

(2) The department may issue and enforce a written or printed chemigation stop work order to any person engaged in, conducting or carrying on chemigation when the department finds the chemigation is in violation of the provisions of this chapter or any rules promulgated pursuant to this chapter.

(3) The chemigation stop work order shall be in effect until the provisions of this chapter or rules promulgated pursuant to this chapter have been complied with.

22-3409. DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE OR PERMIT.

The director is authorized subsequent to a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, to deny, suspend, revoke or modify any license or permit provided for in this act in any case in which he finds that the holder of an applicator's license, operator's license or permit has been convicted or is subject to a final order imposing a civil penalty under Section 14, Federal Insecticide, Fungicide, Rodenticide Act, or that there has been a failure or refusal to comply with the provisions of this act or rules promulgated by the director.

22-3410. RECIPROCITY. The director may at his discretion issue a license or permit without examination to a nonresident who is licensed or certified in another jurisdiction where the requirements are substantially in accordance with the provisions of this act.

22-3411. CHANGE OF ADDRESS OR PLACE OF BUSINESS. Any person who has been issued a license or permit under the provisions of this act shall immediately notify the department in writing when he changes his address or place of business.

22-3412. DELEGATION OF DUTIES. All authority vested in the director by virtue of the provisions of this act may with like force and effect be executed by designated employees of the department of agriculture as the director may from time to time designate for said purpose.

22-3413. CONTAINER DISPOSAL. Partially full or empty pesticide containers shall be disposed of as prescribed by the Idaho department of environmental quality and in accordance with federal regulations.

22-3414. INSPECTION. (1) For the purpose of carrying out the provisions of this act the director may enter on any public or private premises at reasonable times in order to have access for the purpose of observing the use and application of pesticides, inspecting records that are required to be maintained by this act, chemigation equipment and standards, chemical use for chemigation, spraying equipment, storage facilities, disposal areas, investigating complaints of injury, inspection and sampling of land and sampling pesticides being distributed, offered for sale, applied or to be applied. The department shall conduct, or make provision to conduct, at least two hundred fifty (250) annual

chemigation system inspections to assure the effectiveness of the chemigation system from keeping chemicals out of surface and ground water.

(2) Should the director be denied access to any land where such access was sought for the purposes set forth in this act, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may, upon such application, issue the search warrant for the purposes requested.

22-3415. FEES COLLECTED -- DISPOSITION. All fees collected under the provisions of this act shall be deposited with the state treasurer and be credited to the pesticide fund of the department of agriculture to be used only for carrying out the provisions of this act.

22-3416. COOPERATION WITH OTHER AGENCIES. The director is authorized to cooperate with and enter into agreements with any other state or federal agency in order to carry out the provisions of this act and to assure uniformity of rules and regulations.

22-3417. DAMAGE CLAIMS. (1) Any individual suffering loss or damage resulting from the use or application by others of any pesticide must file with the department a written report of loss which contains but is not limited to the following information:

- (a) The name and address of the claimant; and
- (b) The type of property alleged to be damaged; and
- (c) The name of the individual applying the pesticide and allegedly responsible; and
- (d) The name of the owner or lessee of the property for whom such application of pesticide was made.

This report must be filed within sixty (60) days of the occurrence of the alleged damage, or prior to the harvest of more than twenty-five percent (25%) of such damaged crop.

(2) The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered a bar to the maintenance of any criminal or civil action.

(3) The failure to file such a report shall not be a violation of this act.

(4) The department may investigate and determine the nature and extent of the alleged damage.

(5) The department shall prepare and file in its office a report of its investigation.

(6) Copies of the report made by the department may be given upon request to individuals who are financially interested in the matter.

22-3417A. LIABILITY LIMITED. There shall be no liability on the part of and no action for damages against any aerial pesticide applicator for the noise of application in the vicinity of a ratite farm if the applicator notifies the owner of the ratites not less than

twenty-four (24) hours nor more than forty-eight (48) hours prior to the application. Provided however, that the applicator shall follow all federal aviation administration rules and regulations and all state statutes and rules regarding aerial applications. The provisions of this section shall not limit liability for harassment or willful violations of state or federal law or rules or regulations promulgated pursuant to those laws.

22-3418. RESTRICTED PESTICIDE USE. (1) The director may by rule restrict or prohibit the use of pesticides if he finds that the labeled use of such pesticides requires the rules restricting their use are necessary to prevent injury to land, people, animals, crops or the environment other than the pests of vegetation which they are intended to destroy.

(2) The areas affected, and the time and conditions of use of such restricted-use pesticides shall be prescribed by rule.

22-3419. PROCEDURE FOR ESTABLISHING A RESTRICTED AREA. (1) The director may upon his own initiative, or upon the petition of a number of owners, lessees or operators of land in an area within a county or two (2) or more contiguous counties in the state may, if it is deemed necessary, issue a proposal to establish a restricted area. The proposal shall set forth the boundaries of the area and the rules proposed to govern the use of pesticides.

The director shall hold a hearing in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code, at a place in reasonable proximity to the proposed area. As soon as possible after completion of the hearing, the director shall make rules applicable thereto or refuse to take such action. The order shall be based on substantial evidence of record at the hearing and shall include findings of fact upon which it is based; Provided, however, that whenever twenty-five (25) or more landowners, representing at least seventy percent (70%) of the acres of land situated within the proposed area, shall sign a petition requesting that a referendum be held, the director shall then conduct a referendum as set forth in subsection (2) of this section.

(2) Whenever in the judgment of the director, the need for the creation of a restricted area cannot be adequately determined by the director after investigation, the director shall conduct a referendum on this question of necessity, by ballot in the area concerned at a public hearing, after notice, setting the time and place, once each week for two (2) weeks before the hearing has been published in a newspaper of general circulation in the area affected. Any person owning, leasing or operating three (3) acres or more within the proposed area is eligible to vote in the referendum. Unless the votes cast in favor of the creation of a restricted area constitute a two-thirds (2/3) majority of those voting, the area shall not be created. If there is such majority, the director shall then issue a proposal in accordance with subsection (1) of this section.

22-3420. PROHIBITED ACTS. No person shall:

(1) Use a pesticide in a manner inconsistent with its labeling except as provided for by rule.

(2) Make pesticide recommendations in a manner inconsistent with its labeling except as provided for by rule.

- (3) Make false or misleading claims through any media relating to the effect of pesticides or application methods to be utilized.
- (4) Operate a faulty or unsafe pesticide spray apparatus, aircraft, or other application device or equipment.
- (5) Operate a faulty or unsafe chemigation system.
- (6) Apply ineffective or improper pesticides.
- (7) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this act.
- (8) Apply pesticides in a faulty, careless, or negligent manner.
- (9) Refuse or neglect to keep and maintain records required by the provisions of this act, or to make reports when and as often as required.
- (10) Distribute, sell or offer for sale any pesticide or device which is misbranded.
- (11) Formulate, distribute, sell or offer for sale any pesticide which is adulterated.
- (12) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken container.
- (13) Refuse or neglect to comply with any limitations or restrictions placed on a license or permit issued under the provisions of this act.
- (14) Refuse or neglect to comply with any other provisions of this act or rule, or any lawful order of the director.
- (15) Aid or abet a licensed or an unlicensed person to evade the provisions of this act, conspire with such licensed or an unlicensed person to evade the provisions of this act, or allow one's license or permit to be used by another person.
- (16) Make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.
- (17) Impersonate any federal, state, county or city inspector or official.
- (18) Use or supervise the use of any restricted-use pesticide, or any state restricted-use pesticide without having complied with the licensing requirements pursuant to this act, and such other restrictions as had been determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator, persons, or land, provided, that a person who is not a certified applicator but an employee of a licensed private applicator may use a restricted-use pesticide or a state restricted-use pesticide under the direct supervision of the licensed private applicator unless otherwise prescribed by the labeling of the pesticide.
- (19) Use or supervise the use of a chemical in a chemigation system without having complied with the licensing requirements pursuant to this act and rules, and such other

restrictions as have been determined by the director. A person who is not a certified applicator but an employee of a licensed private applicator may use chemicals under the direct supervision of a licensed private applicator unless otherwise prescribed by the labeling of the chemical.

(20) Chemigate without installing the proper chemigation equipment to protect against surface or ground water contamination.

(21) Fail to abide by the conditions of a stop sale, use or removal order, or chemigation stop work order.

(22) Offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, deliver or offer to deliver, chemicals for chemigation to an unlicensed person.

22-3421. ADOPTION AND SCOPE OF RULES. (1) The director is authorized to adopt appropriate rules for carrying out the purpose and provisions of this act including, but not limited to, rules providing for:

- (a) The collection and examination of samples of pesticides or devices; and
- (b) The safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers; and
- (c) Procedures in making pesticide recommendations; and
- (d) Procedures for obtaining permits; and
- (e) Regulating the labeling of devices; and
- (f) Procedures to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons. For the purpose of this section, the department may become a hazardous waste generator, and may set fees to partially offset an agricultural chemical waste disposal program's cost; and
- (g) Antipollution devices, chemigation equipment requirements, performance standards and installation requirements; and
- (h) Listing of the sites where chemigation will be conducted by the applicator.

(2) Such rules shall be promulgated in accordance with chapter 52, title 67, Idaho Code.

22-3422. PENALTIES FOR OPERATING WITHOUT LICENSE. Any person operating as a professional or private applicator or dealer without a license shall forfeit to the state for each day's operation one hundred dollars (\$100) as a civil penalty and such operation may be enjoined upon complaint of the director.

22-3423. PENALTY FOR VIOLATIONS. (1) Any person who shall forge, alter, counterfeit, simulate or falsely represent, or who shall without proper authority use any license issued by the director under this act, or who shall violate or fail to comply with

any provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail for not less than three (3) months nor more than twelve (12) months or be subject to both such fine and imprisonment.

(2) Any person who violates or fails to comply with any provision of this act or any rules promulgated under this act may be assessed a civil penalty by the department or its duly authorized agent of not more than three thousand dollars (\$3,000) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule shall be deposited in the state treasury and credited to the pesticide account of the department.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interests will be best served by suitable warnings or other administrative action.

22-3424. REVIEW OF ACTION OF DIRECTOR. Any person who has exhausted all administrative remedies available within the department and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code. The review may be obtained by filing in the district court within thirty (30) days' notice of the action of the director, a written petition praying that such action be set aside. A copy of such petition shall forthwith be delivered to the director, and within thirty (30) days thereafter the director shall certify and file in the district court of the area affected a transcript of any record pertaining thereto, including a transcript of evidence received at any hearing of referendum. The district court shall give notice, by United States mail, to the director of the department of agriculture, and to the petitioner or petitioners, of the time and place at which the court will hear such petition, at which time any interested party may be heard. Upon completion of the hearing the court shall affirm, set aside or modify the action of the director, except that the findings of the director as to the facts, if supported by substantial evidence, shall be conclusive.

22-3425. SEVERABILITY. If any clause, sentence, paragraph, or part of this act shall, for any reason, be adjudged by a competent court of jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which said judgment shall have been rendered.

22-3426. UNIFORMITY OF STATE PESTICIDE RULE. Notwithstanding any other provision of law to the contrary, no city, county, taxing district or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation,

resolution or statute regarding pesticide sale, use, or application including without limitation: registration, notification of use, advertising and marketing, distribution, application methods, applicator training and certification, storage, transportation, disposal, disclosure of confidential information or product composition. Nothing contained in this section shall prohibit or limit fire prevention personnel or fire extinguishing personnel of a city, county or fire protection district from conducting inspections pursuant to or enforcing the International Fire Code.